

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket 96-45
Universal Service)	
)	DA 03-2330
NPCR, INC. d/b/a NEXTEL PARTNERS)	
)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
in the State of Alabama)	
_____)	

**REPLY COMMENTS OF
NEXTEL PARTNERS**

NPCR, INC. d/b/a NEXTEL PARTNERS

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Date: September 4, 2003

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SUMMARY

Nextel Partners has demonstrated in its Petition for Designation that it provides, or will provide upon designation as an Eligible Telecommunications Carrier (“ETC”) all of the “supported services” required by the Commission’s Rules throughout its designated service area. Nextel Partners has also shown that a grant of its Petition is in the public interest for the affected rural telephone company (“RTC”) study areas, because it would result in the benefits of additional competition, innovative services and technology and enhanced consumer choice for those RTC study areas.

The commenters in this proceeding do not present any evidence either that Nextel Partners will not or cannot provide the supported services throughout its designated service area upon designation, or that the public interest will not benefit from granting Nextel Partners ETC status. The commenters’ various claims that granting Nextel Partners ETC status in Alabama will not benefit the public interest are speculative and unsupported by empirical data or legal precedent. Existing Commission policies and precedent favor increased consumer choice and access to technology. The commenters’ arguments opposing Nextel Partners’ Petition run contrary to the goals of universal service and are designed primarily to protect the franchises of rural ILECs at the expense of depriving rural consumers in Alabama of superior service and an enhanced menu of choices.

Many of the issues addressed by the commenters are larger questions of national policy (such as the potential for affecting the overall size of the universal service fund) that exceed the scope of this proceeding, which is concerned with Nextel Partners’ eligibility for ETC status in Alabama. The commenters have not, however, provided evidence to support their overarching policy concerns, and in any event are not entitled to have these issues addressed in this

proceeding. Nor do the policy issues discussed by the commenters merit a stay of this proceeding, or the imposition of any further delay in granting Nextel Partners ETC status in Alabama. The Commission must address Nextel Partners' Petition based on existing law and precedent and Nextel Partners will be subject to any changes affecting ETCs that may be promulgated in the future.

In sum, nothing submitted by any commenter in this proceeding has refuted or meaningfully called into question any of the substantive showings made by Nextel Partners in its Petition for Designation. Accordingly, Nextel Partners requests that the Commission grant its Petition without further delay.

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**REPLY COMMENTS OF
NPCR, INC. d/b/a NEXTEL PARTNERS**

NPCR, Inc. d/b/a Nextel Partners (“Nextel Partners”), by its undersigned counsel hereby submits its “Reply Comments” in the above-captioned proceeding in response to comments filed by Frontier Communications (“Frontier”), CenturyTel, Inc. (“CenturyTel”), the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”) and Verizon (collectively, the “Commenters”).¹

Nextel Partners’ April 4, 2003 Petition for Designation (the “Petition”) as an Eligible Telecommunications Carrier (“ETC”) demonstrated that Nextel Partners provides, or upon designation will provide, in the Designated Areas² of the State of

¹ See Public Notice, *Wireline Competition Bureau Seeks Comment on NPCR, Inc. d/b/a Nextel Partners Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, CC Docket No. 96-45, DA 03-2330 (rel. July 16, 2003); and Nextel Partners, Inc. d/b/a Nextel Partners Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, 68 Fed. Reg. 47563 (Aug. 11, 2003) (Reply comments due September 4, 2003.)

² In its Petition, Nextel Partners refers to the non-rural ILEC wire centers and rural telephone company (“RTC”) study areas in which it seeks ETC status as the “Designated Areas.” Nextel Partners has determined not to seek ETC designation in the RTC study

Alabama all of the services and functionalities required of an ETC pursuant to applicable law, and that the public interest would be served by designating Nextel Partners as an ETC.

The Commenters raise a variety of issues, none of which constitutes any legal, factual or policy basis for the denial of Nextel Partners' ETC status. Accordingly, the Commission should grant Nextel Partners ETC status in the Designated Areas of the State of Alabama without further delay.

A. Designation of Nextel Partners as an ETC Will Promote the Goals of Universal Service

The Commission has determined that “[d]esignation of competitive ETCs promotes competition *and* benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies.”³ The Commission’s Universal Service Rules are based on the fundamental assumptions that residents of rural communities will benefit from competition in telecommunications services and access to the same technologies and services that are available to residents of urban areas. In fact, this central goal is stated outright in the Act itself:

Consumers in all regions of the Nation, including low-income consumers and those in rural, insular and high cost areas, should have access to telecommunications and information services, including interexchange

area set forth on **Exhibit 1** hereto and therefore withdraws that RTC study area from consideration in this proceeding. In addition, as to non-rural ILEC wire centers, Nextel Partners has determined that it will seek ETC designation in only the wire centers set forth on **Exhibit 2** hereto, and withdraws all other non-rural ILEC wire centers listed in **Attachment 1** to its Petition.

³ *In the Matter of Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, 16 FCC Rcd 48 at ¶ 15 (2000) (“*Western Wireless Wyoming Order*”) (emphasis supplied).

services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.⁴

The burden is on parties opposing designation to refute Nextel Partners' threshold showing that its Petition for Designation as an ETC in Alabama complies with these clearly-stated statutory goals.⁵ As demonstrated herein, the Commenters have not met that burden.

For example, OPASTCO broadly asserts that Nextel Partners' petition "is based entirely on vague generalities regarding the generic benefits of competition."⁶ OPASTCO, however, provides no empirical evidence to refute the showings made by Nextel Partners in its Petition; nor does OPASTCO otherwise demonstrate that designation of Nextel Partners as an ETC will not advance the Commission's pro-competitive, consumer choice, and advanced technology universal service goals.⁷

B. Nextel Partners Will Provide Service Throughout its Designated Service Territory Over its Own Facilities

CenturyTel contends that Nextel Partners "does not expressly state" in its Petition that it will serve the LEC study areas in which it seeks designation "in their entirety, either using its own facilities or a combination of its own facilities and resale of another

⁴ 47 U.S.C. § 254(b)(3).

⁵ See, e.g., *Western Wireless Wyoming Order* at ¶ 16; *In the Matter of Federal-State Joint Board on Universal Service; RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area In the State of Alabama*, 17 FCC Rcd 23532 at ¶¶ 22 and 26 (2002) ("RCC Order").

⁶ OPASTCO Comments at 5.

⁷ Indeed, OPASTCO concedes that its comments "are not intended to debate the many nuances of considering the public interest when evaluating an ETC application." OPASTCO Comments at 5.

carrier's services.”⁸ CenturyTel claims that such a statement is required by Section 214(e)(5) of the Act and Section 54.201(d)(1) of the Commission's Rules. CenturyTel has misstated the applicable legal standards set forth in Section 214(e) of the Act and Section 54.201(d)(1) of the Commission's Rules. Those provisions state that an eligible telecommunications carrier shall offer supported services “throughout the service area for which the designation is received,”⁹ not that an ETC must “expressly state” that it will “serve LEC study areas in their entirety” as CenturyTel claims.

In its Petition, Nextel Partners stated that it “will provide service over its own facilities in the State of Alabama.”¹⁰ An ETC is only required to respond to a “reasonable request” to furnish communications service within its designated service territory,¹¹ and is not required to serve every square inch of that area immediately upon designation. Nextel Partners' Petition clearly demonstrates that Nextel Partners has both the “capability and commitment to provide universal service” in the Designated Areas.

⁸ CenturyTel Comments at 2.

⁹ See 47 U.S.C. § 214(e)(1) and 47 C.F.R. § 54.201(d)(1). Section 201(d)(5) of the Act, to which CenturyTel also cites, defines what is meant by the term “service area,” but does not support CenturyTel's argument.

¹⁰ Nextel Partners Petition at 2, Section A.

¹¹ See, e.g., Declaratory Ruling, *In the Matter of Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, 15 FCC Rcd 15168 (2002) (“*South Dakota Declaratory Ruling*”) at ¶ 17; see also 47 U.S.C. § 201(a). Furthermore, CenturyTel's complaint that Nextel Partners failed to state that it will use support to offer CMRS to customers who currently cannot receive such service is without merit. Nextel Partners is committed to advertise its supported services and provide telecommunications services to eligible customers upon reasonable request.

This showing satisfies the Commission’s requirements for designation of an ETC.¹² As shown on the coverage map submitted with its Petition, Nextel Partners already provides wireless telecommunications service in much of rural Alabama.¹³ Upon designation as an ETC, and consistent with applicable law, Nextel Partners will furnish “communications services upon reasonable request”¹⁴ throughout the Designated Areas.

C. Nextel Partners Does Not Seek Redefinition of Any Rural Telephone Company Study Area in the State of Alabama

CenturyTel also questions whether Nextel Partners seeks “redefinition of some or all of the rural service areas pursuant to Section 214(e)(5) of the Act.”¹⁵ CenturyTel apparently disagrees with the proposals of some competitive ETCs to modify RTC service areas in Alabama, and attempts to draw Nextel Partners’ Petition into this controversy. However, Nextel Partners *does not* request redefinition of any RTC study area in its Petition. CenturyTel’s raising of this issue, therefore, has no relevance to this proceeding.

¹² See *South Dakota Declaratory Ruling* at ¶ 17; see also *RCC Order* at ¶ 16 (“[a] new entrant can make a reasonable demonstration . . . of its capability and commitment to provide universal service without the actual provision of the proposed service.”)

¹³ Nextel Partners’ coverage map set forth in **Attachment 3** to its Petition reflects the many Economic Area (“EA”) and site-based licenses pursuant to which Nextel Partners offers its services in Alabama. The Commission’s ULS database contains records of these licenses, which are held by wholly-owned subsidiaries of Nextel Partners Operating Corp., the corporate parent of NPCR, Inc.

¹⁴ 47 U.S.C. § 201(a).

¹⁵ CenturyTel Comments at 2.

D. Designation of Nextel Partners as an ETC in the Designated Areas in Alabama is in the Public Interest

The record in this proceeding clearly demonstrates that Nextel Partners' designation as an ETC will benefit Alabama telecommunications users. These consumers are the focus of the goals of universal service.¹⁶ Under the Commission's universal service policies, high cost and low income consumers in Alabama should be afforded the same opportunities as other consumers to choose a telecommunications carrier, to access new technologies, and to select from a menu of innovative services.¹⁷ Nextel Partners' designation as an ETC in the Designated Areas would unquestionably advance these universal service goals in the State of Alabama.¹⁸

OPASTCO, Frontier and CenturyTel all maintain that designation of Nextel Partners as an ETC in Alabama will not benefit the public interest.¹⁹ These Commenters raise a number of meritless arguments in an attempt to justify their positions. Frontier

¹⁶ See *Alenco Communications Inc. et al. v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000) ("*Alenco Communications*").

¹⁷ See *In the Matter of Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776 at ¶¶ 4, 21 (1997) ("Universal Service Order"). See also *Application of WWC Texas RSA Limited Partnership for Designation as an Eligible Telecommunications Carrier Pursuant to 47 U.S.C. § 214 (e) and PUC SUBST. R. 26.418*, PUC Docket Nos. 22289 and 22295, SOAH Docket Nos. 473-00-1167 and 473-00-1168 (Texas Public Utility Commission, October 30, 2000) ("*Texas PUC Order*") at 2.

¹⁸ See, e.g., *Western Wireless Wyoming Order* at ¶15 ("[d]esignation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies.").

¹⁹ Frontier asserts that Nextel Partners' Petition should be subjected to a "rigorous" public interest test. As demonstrated herein, however, designation of Nextel Partners as an ETC in the Designated Areas is clearly in the interest of the public, under the standards established by Congress and the Commission. Moreover, Frontier does not explain why it is appropriate and legal that Nextel Partners should be treated differently than any other similarly-situated applicant for ETC status.

contends that designation of Nextel Partners as an ETC will not enhance competition, because wireline and wireless service providers do not compete.²⁰ This argument runs contrary to well-established Commission precedent that clearly and consistently recognizes the benefits to competition of designating wireless ETCs in RTC study areas.²¹ Frontier has not presented any empirical evidence to support its assertion, and its contention does not warrant serious consideration.

Frontier's position that it does not compete with Nextel Partners, based solely on the fact that Nextel Partners does not offer wireline services, is no more than a thinly-veiled attempt to exclude all wireless carriers from ETC status²² in contravention of the Commission's policy of technological neutrality.²³ At any rate, the Commission has already determined that wireless providers should be designated as ETCs, stating, "We agree with the Joint Board's analysis and recommendation that any telecommunications

²⁰ Frontier Comments at 4.

²¹ See, e.g., *In the Matter of Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, 16 FCC Rcd 18133 (2001) ("*Western Wireless Pine Ridge Order*") at ¶ 8 (we find that the designation of Western Wireless as an ETC in those areas served by rural telephone companies serves the public interest by promoting competition and the provision of new technologies to consumers in high-cost and rural areas); *South Dakota Declaratory Ruling* at ¶ 16 (designating wireless carriers that already provided services in RTC study areas as ETCs); *RCC Order* at ¶¶ 22-25 (finding that designation of wireless carrier RCC Holdings will bring competition and innovative service to rural consumers).

²² OPASTCO also seeks in its comments to block wireless ETCs from designation as ETCs, in contravention of the Commission's technology-neutral policies.

²³ See *Universal Service Order* at ¶ 145 ("any telecommunications carrier using any technology, including wireless technology, is eligible to receive universal service support of it meets the criteria under section 214(e)(1)...any wholesale exclusion of a class of carriers by the Commission would be inconsistent with the language of the statute and the pro-competitive goals of the 1996 Act").

carrier using any technology, including wireless technology, is eligible to receive universal service support if it meets the criteria under Section 214(e)(1).”²⁴

Frontier’s admission that Nextel Partners’ service is “complementary” to wireline services entirely undermines Frontier’s claim that designation of Nextel Partners as an ETC is not in the public interest. By characterizing Nextel Partners’ wireless services as “complementary,” Frontier concedes that Nextel Partners supplies telecommunications services that Frontier’s customers – and other rural consumers -- would otherwise lack. The addition of Nextel Partners’ “complementary” services increases consumers’ menu of choices, provides new and innovative services, and helps to keep rates “just and affordable.”

Wireless carriers such as Nextel Partners also add the element of mobility to the provision of universal service, a valuable option that the incumbent wireline LEC cannot match. This essential difference is particularly beneficial to consumers in rural areas, including remote roads and highways, where wireline telephones are more widely spaced than in concentrated urban areas. In addition, Nextel Partners typically offers a much larger local calling area than the RTCs it competes with, and this is a significant benefit to consumers.²⁵ All of the foregoing benefits are in the public interest and advance the goals of universal service.²⁶

Frontier and CenturyTel argue that designation of Nextel Partners as an ETC will not bring any additional competitive benefits to the public, because Nextel Partners is not

²⁴ *Id.* at ¶ 145.

²⁵ Moreover, unlike some other wireless carriers, Nextel Partners does not impose any “roaming” charges for the use of its nationwide service.

²⁶ *See, e.g., RCC Order* at ¶¶ 23-24.

a *new* market entrant.²⁷ This argument, however, is not persuasive, because the Commission does not require that an ETC applicant be new to the study area.²⁸ Frontier's and CenturyTel's additional arguments concerning "windfall profits"²⁹ and Frontier's argument concerning "cream-skimming"³⁰ are similarly unconvincing.

²⁷ See Frontier Comments at 5; CenturyTel Comments at 3. CenturyTel also states that Nextel Partners "does not state how many *CMRS* carriers already serve customers" in the study areas Nextel Partners seeks to serve. CenturyTel Comments at 2 (emphasis supplied). However, Nextel Partners is not required to make any such showing in its Petition. Nextel Partners' statement in its Petition was that it would benefit the public by providing service in some areas that "are not presently served by competitive *wireline* carriers that could provide an alternative to the incumbent LEC." Nextel Partners Petition at 7. In any case, CenturyTel's apparent implication that only one *CMRS* provider should be granted ETC status in rural areas runs contrary to the goals of universal service as expressed by Congress in Section 254(b) of the Act. Congress intended that rural consumers be afforded the same menu of choices and advanced technology that are available to urban consumers.

²⁸ See *Western Wireless Pine Ridge Order* at ¶ 8; *South Dakota Declaratory Ruling* at ¶ 16 (designating wireless carriers that already provided services in study areas as ETCs).

²⁹ Frontier's "windfall profits" argument asserts, without any foundation, that the addition of USF subsidies to a *CMRS* carrier's financial structure will result in an unanticipated "windfall profit." See Frontier Comments at 8. But there is no empirical basis whatsoever for this claim. Moreover, it is beyond the scope of this proceeding, which concerns Nextel Partners' Petition for Designation, rather than the mechanism for computing USF payments to ETCs.

³⁰ Frontier's "cream-skimming" argument is that, upon designation as an ETC Nextel Partners will receive an excessive amount of universal service funds because a wireless customer's eligibility for funding is based on the customer's billing address. See Frontier Comments at 6. However, this issue exceeds the scope of the instant proceeding, which is only concerned with Nextel Partner's eligibility for ETC status. See, e.g., *South Dakota Declaratory Ruling* at ¶ 2. In addition, the Commission has adopted the recommendation of the Rural Task Force that "a wireless mobile carrier use a customer's location . . . for purposes of receiving high-cost universal service support." *In the Matter of Federal-State Joint Board on Universal Service: Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11244 at ¶ 180 (2001) ("MAG Order").

E. The Policy Arguments Raised by the Commenters Are Beyond the Scope of this Proceeding and Fail to Justify a Stay

This proceeding is solely concerned with the question of Nextel Partners' qualifications to be granted ETC status, and is not a general forum for the consideration of national policies regarding universal service. To the extent that the arguments raised by the Commenters seek to address larger questions of policy, they exceed the scope of this proceeding and cannot be addressed in the context of determining Nextel Partners' qualification for ETC status.³¹ Nor does the existence of extrinsic policy issues justify a stay of this proceeding, or the imposition of delay in the consideration of Nextel Partners' Petition.³²

The Commenters nevertheless request that the Commission stay consideration of Nextel Partners' Petition pending the resolution of policy issues that exceed the scope of this proceeding. Verizon suggests that additional ETC designations in non-rural areas threaten the form of access charges established by the CALLS Order in CC Docket Nos. 96-262 and 94-1.³³ OPASTCO, CenturyTel and Frontier propose that the Commission

³¹ See, e.g., *RCC Order* at ¶ 32 (“We recognize that these parties raise important issues regarding universal service high-cost support. We find, however, that these concerns are beyond the scope of this Order, which considers whether to designate a particular carrier as an ETC.”)

³² OPASTCO claims that there is “precedent” for staying ETC designations, referring to a 1993 Order from the Commission that imposed an indexed cap on USF support for local exchange carriers on an interim basis. See OPASTCO Comments at 4 n.9; see also *Amendment of Part 36 of the Commission’s Rules and Establishment of a Joint Board*, 9 FCC Rcd 303 (1993). This assertion, however is fatally flawed, since the cited case, which predates the 1996 Act, neither stays any Commission proceeding, nor affects the eligibility of any ETC applicant, but merely adjusts the funding for ILECs on a temporary basis.

³³ Verizon Comments at ¶ 1.

consider staying the instant proceeding pending resolution of high-cost support and other USF issues presently before the Federal-State Joint Board³⁴

The possibility of a future change in rules generally affecting the designation of ETCs and/or the distribution of Universal Service Funds cannot justify staying Nextel Partners' request for designation as an ETC in Alabama. The Commission is bound to abide by *existing* rules and policies in all proceedings.³⁵ The Commission is committed to resolving ETC designation petitions in a six-month time frame, recognizing that "excessive delay in the designation of competing providers may hinder the development of competition and the availability of service in many high-cost areas."³⁶ Staying the instant proceeding would "unnecessarily delay resolution of this matter well beyond the Commission's informal [six month] commitment."³⁷

Moreover, as a practical matter, since Nextel Partners and all other ETC petitioners must in any event comply with Commission Orders that adopt Joint Board recommendations, there is no logic in holding ETC designation proceedings in abeyance pending the outcome of Joint Board proceedings. This was clearly recognized by the Commission in a recent Order in Docket 96-45, in which the Commission stated:

³⁴ See OPASTCO Comments at 2; Frontier Comments at 9; CenturyTel Comments at 2,4.

³⁵ *CSRA Cablevision, Inc.*, 47 FCC 2d 572 at ¶ 6 (1974) ("Under the Administrative Procedure Act and the relevant judicial decision, the Commission is bound to follow its existing rules until they have been amended pursuant to the procedures specified by that act.").

³⁶ *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved Areas and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12264 (2000) ("*Twelfth Report and Order*").

³⁷ See *RCC Order* at n.27.

We note that the outcome of the Commission's pending proceeding examining the rules relating to high-cost universal service support in competitive areas could potentially impact, among other things, the support that competitive ETCs may receive in the future. *As such, we recognize that any grant of competitive ETC status pending completion of that proceeding will be subject to whatever rules are established in the future.* We intend to proceed as expeditiously as possible to address the important and comprehensive issues that are being raised.³⁸

OPASTCO raises the specter of imminent ballooning of the Universal Service Fund as grounds for a stay, asserting that if Nextel Partners is granted ETC designation in Alabama, then all CMRS providers everywhere will seek and obtain ETC designation.³⁹ OPASTCO estimates that if all CMRS providers nationwide were to apply for and receive ETC status, the annual funding level of the High-Cost program would increase by approximately \$2 billion.⁴⁰ However, OPASTCO provides no evidence demonstrating that all CMRS providers intend to be designated as ETCs.⁴¹ In fact, there has been no flood of wireline ETC petitioners and there is no reason to assume that wireless carriers will act differently by seeking to obtain ETC designation *en masse*.

A review of the data reveals that it is the rural ILECs that are responsible for the growth of the fund. Wireless ETCs received less than \$1.5 million in high cost support in

³⁸ *In the Matter of the Federal-State Joint Board on Universal Service*, Order and Order on Reconsideration, 2003 FCC Lexis 3915 at ¶ 34 (emphasis supplied) (“*Competitive ETC Order*”).

³⁹ See OPASTCO Comments at 2-3.

⁴⁰ OPASTCO Comments at 3.

⁴¹ Nextel Partners' primary business focus is the provision of services in mid-sized and tertiary markets. This business focus makes Nextel Partners a natural and high-priority candidate for ETC designation. But not every CMRS carrier is interested in pursuing an active course of providing the required services for ETC designation and building out a network in high-cost areas. There is no reason to believe that wireless ETCs pose any greater risk than wireline ETCs to the survival of the Universal Service Fund.

2000, where as the rural LECs received almost \$2.03 billion in high cost support in that same year.⁴² Assuming a highly optimistic growth projection, wireless ETC funding would rise to, at most, approximately \$102 million in 2003, compared to the approximately \$3.2 billion in high cost funding that rural LECs will receive during the same time period.⁴³

Moreover, in developing support mechanisms, the Commission was aware that the Universal Service Fund would grow as competitive ETCs entered the market, and the Commission adopted mechanisms that would allow for adjustment over time.⁴⁴ The funding⁴⁵ and all of the core services⁴⁶ were discussed in length, reviewed by the Joint Board, reconsidered in the recent Order and Order on Reconsideration⁴⁷ and, in some cases, litigated.⁴⁸ In establishing the funding mechanisms, the Commission struck a

⁴² See Reply Comments of CTIA, *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (June 3, 2002) at 3.

⁴³ See *id.*

⁴⁴ See *MAG Order* at ¶ 11 (“The plan adopted today will provide certainty and stability for rural carriers for the next five years, enabling them to continue to provide supported services at affordable rates to American consumers. While we take an important step today on rural universal service reform, our task is not done. Our universal service rules cannot remain static in a dynamic marketplace. As we move forward, we will continue to refine our policies to preserve and advance universal service, consistent with the mandates in section 254.”); see also *In the Matter of Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, 18 FCC Rcd 2932, ¶ 84 (2003) (wherein the Commission is already working to address anticipated future growth in the USF resulting from the entry of additional wireless ETCs during the next several years.).

⁴⁵ See, e.g., *In the Matter of Federal-State Joint Board on Universal Service*, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20452, ¶ 90 (1999) (discussing support of second lines and the lines of non-ILEC ETCs).

⁴⁶ See *Competitive ETC Order* at ¶ 7.

⁴⁷ *Id.*

⁴⁸ See, e.g., *Alenco Communications*.

balance between the concerns of all types of parties and carriers, including consideration of issues involving wireless ETC designation.⁴⁹ To prevent designation of competitive ETCs as we move into the implementation phase of these decisions is troubling at best, and antithetical to the underlying purposes of the Act.⁵⁰ After the ILECs fought to increase the amount of funding to support embedded costs,⁵¹ they are now using the size of the fund as an argument to prevent the entry of competitors.⁵²

Conclusion

In sum, all applicable legal and public interest requirements for designation of Nextel Partners as an Eligible Telecommunications Carrier have been satisfied. Accordingly, Nextel Partners requests that the Commission promptly grant its Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama.

⁴⁹ See *MAG Order* at ¶ 17 (“The Recommendation represents the consensus of individual Rural Task Force members, who work for a broad range of interested parties, often with competing interests, including rural telephone companies, competitive local exchange carriers, interexchange carriers, wireless providers, consumer advocates, and state and federal government agencies”), ¶ 178 (“All telecommunications carriers, including commercial mobile radio service (CMRS) carriers that provide supported services, regardless of the technology used, may be eligible to receive federal universal service support”), and ¶ 180 (“we adopt the Rural Task Force’s recommendation that a wireless mobile carrier use a customer’s location ... for purposes of receiving high-cost universal service support”).

⁵⁰ See *Alenco Communications* at 619.

⁵¹ See *MAG Order* at ¶¶ 6-8.

⁵² In non-rural study areas, the OPASTCO’s anticompetitive “ballooning” argument, which OPASTCO has attempted to cloak in the guise of a “public interest” concern over the size of the fund, is irrelevant since no public interest determination is warranted under the Act for non-rural study areas.

Respectfully submitted,

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Date: September 4, 2003

EXHIBIT 1

RTC Study Area Withdrawn

250301 Frontier Lamar County

EXHIBIT 2

Revised List of Non-Rural ILEC Wire Centers For Which Designation is Requested

1. VERIZON WIRE CENTERS (SACs 250281 and 250293)

VERIZON COMMUNICATIONS, INC	ABVLALXA
VERIZON COMMUNICATIONS, INC	ANDSALXA
VERIZON COMMUNICATIONS, INC	ARITALXA
VERIZON COMMUNICATIONS, INC	BLBTALXA
VERIZON COMMUNICATIONS, INC	BNKSALXA
VERIZON COMMUNICATIONS, INC	BRNDALXA
VERIZON COMMUNICATIONS, INC	CLIOALXA
VERIZON COMMUNICATIONS, INC	CLMAALXA
VERIZON COMMUNICATIONS, INC	DLVLALXA
VERIZON COMMUNICATIONS, INC	DPISALXA
VERIZON COMMUNICATIONS, INC	DTHNALXA
VERIZON COMMUNICATIONS, INC	ELBAALXA
VERIZON COMMUNICATIONS, INC	ENTRALXA
VERIZON COMMUNICATIONS, INC	FRHMALXA
VERIZON COMMUNICATIONS, INC	FWRVALXA
VERIZON COMMUNICATIONS, INC	GDBAALXA
VERIZON COMMUNICATIONS, INC	GENVALXA
VERIZON COMMUNICATIONS, INC	GNVLALXA
VERIZON COMMUNICATIONS, INC	GRGNALXA
VERIZON COMMUNICATIONS, INC	HDLDALXA
VERIZON COMMUNICATIONS, INC	HRFRALXA
VERIZON COMMUNICATIONS, INC	IRSEALXA
VERIZON COMMUNICATIONS, INC	LSVLALXA
VERIZON COMMUNICATIONS, INC	LVRNALXA
VERIZON COMMUNICATIONS, INC	MLCYALXA
VERIZON COMMUNICATIONS, INC	NTSLALXA
VERIZON COMMUNICATIONS, INC	NWBCALXA
VERIZON COMMUNICATIONS, INC	NWTNALXA
VERIZON COMMUNICATIONS, INC	OPP ALXA
VERIZON COMMUNICATIONS, INC	OZRKALXA
VERIZON COMMUNICATIONS, INC	RDLVALXA
VERIZON COMMUNICATIONS, INC	SLCMALXA
VERIZON COMMUNICATIONS, INC	SMSNALXA
VERIZON COMMUNICATIONS, INC	TLLSALXA
VERIZON COMMUNICATIONS, INC	WCBGALXA

2. **BELLSOUTH WIRE CENTERS (SAC 255181)**

BELLSOUTH CORP	AUBNALMA
BELLSOUTH CORP	BLFNALMA
BELLSOUTH CORP	BRTOALMA
BELLSOUTH CORP	BYMNALMA
BELLSOUTH CORP	CNTMFLLE
BELLSOUTH CORP	CTRNALNM
BELLSOUTH CORP	DDVLALMA
BELLSOUTH CORP	EUFLALMA
BELLSOUTH CORP	EUTWALMA
BELLSOUTH CORP	EVRGALMA
BELLSOUTH CORP	FMTNALMT
BELLSOUTH CORP	FRHPALMA
BELLSOUTH CORP	FTDPALMA
BELLSOUTH CORP	HLVIALMA
BELLSOUTH CORP	HRBOALOM
BELLSOUTH CORP	JCSNALNM
BELLSOUTH CORP	LFYTALRS
BELLSOUTH CORP	LGRNGAMA
BELLSOUTH CORP	LNDNALMA
BELLSOUTH CORP	MCINALMA
BELLSOUTH CORP	MOBLALAP
BELLSOUTH CORP	MOBLALAZ
BELLSOUTH CORP	MOBLALBF
BELLSOUTH CORP	MOBLALOS
BELLSOUTH CORP	MOBLALPR
BELLSOUTH CORP	MOBLALSA
BELLSOUTH CORP	MOBLALSE
BELLSOUTH CORP	MOBLALSF
BELLSOUTH CORP	MOBLALSH
BELLSOUTH CORP	MOBLALSK
BELLSOUTH CORP	MOBLALTH
BELLSOUTH CORP	MTGMALDA
BELLSOUTH CORP	MTGMALMB
BELLSOUTH CORP	MTGMALMT
BELLSOUTH CORP	MTGMALNO
BELLSOUTH CORP	MTVRALMA
BELLSOUTH CORP	OPLKALMT
BELLSOUTH CORP	PHCYALFM

(BELLSOUTH WIRE CENTERS (SAC 255181) Cont'd)

BELLSOUTH CORP	PHCYALMA
BELLSOUTH CORP	PRVLALMA
BELLSOUTH CORP	SELMALMT
BELLSOUTH CORP	THVLALMA
BELLSOUTH CORP	TROYALMA
BELLSOUTH CORP	TSKGALMA
BELLSOUTH CORP	YORKALMA

CERTIFICATE OF SERVICE

The undersigned, an attorney in the law firm of Catalano & Plache, PLLC hereby certifies that on this fourth day of September, 2003, a true and correct photocopy of the foregoing "Reply Comments" was sent, via US First Class Mail, postage prepaid, to the following persons:

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